

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

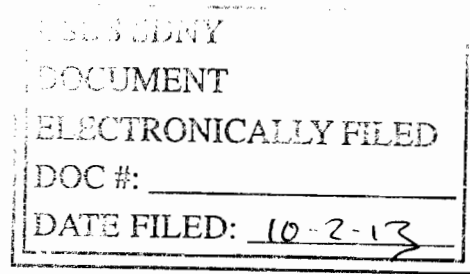
PRINCETON DIGITAL IMAGE
CORPORATION,

Plaintiff,

-v-

HEWLETT-PACKARD, CO., *et al.*,

Defendants



No. 12 Civ. 779 (RJS)
ORDER

RICHARD J. SULLIVAN, District Judge:

The Court is in receipt of parties' joint letter ("Letter"), dated September 27, 2013, requesting a pre-motion conference to discuss Plaintiff's motion to compel. In the letter, Plaintiff demands disclosure of: (1) chipset information about Defendant HP's discontinued cameras, (2) spreadsheet data about when Defendant's products were returned, and (3) Defendant's financial disclosures related to discretionary discounts. Because the Court presumes – based on Defendant's representation in the letter – that the data in (3) has by now been disclosed, this Order will only address (1) and (2).

With respect to the camera chipsets, Defendant informs the Court that "despite diligent searches, [Defendant] has been unable to locate schematics or bills of material that would identify the chipsets in its OEM cameras." (Letter at 4.) Since a party cannot produce items it does not have, and need not prove a negative, the Court finds that such information is not available to Defendant and Plaintiff's motion to compel is **HEREBY DEEMED MADE AND DENIED**. Of course, if it turns out that Defendant has mischaracterized its search or misrepresented the availability of responsive documents, the Court will not hesitate to sanction Defendant.

With respect to the product return data, Defendant claims that such data would be too time-consuming and costly to acquire. (Letter at 5.) Defendant does not, however, specify how much time

and money the production of such information would cost. Accordingly, IT IS HEREBY ORDERED that the parties shall conference with the Court by telephone on Friday, October 4, 2013 at 10:30 AM. Plaintiff shall call the Court at (212)-805-0264 after ensuring that all parties are on the line.

SO ORDERED.

Dated: October 2, 2013
 New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE